

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CONCEPCION CAMPBELL, :
et al., : 10-CV-3800 (JBW) (MLO)
Plaintiff. :
:
February 10, 2011
:
V. : Brooklyn, New York
:
STEVEN J. BAUM, ESQ., :
et al., :
Defendant. :
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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE MICHAEL L. ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: SUSAN CHANA LASK, ESQ.

For the Defendant: BRETT A. SCHER, ESQ.
ANDREW B. BOESE, ESQ.

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1 THE CLERK: Civil cause for pretrial conference,
2 Campbell v. Baum, Esq., et al., docket number 10-CV-3800.

3 Counsel, state your appearances for the record,
4 please. For the plaintiff?

5 MS. LASK: Susan Chana Lask for plaintiffs, 244 5th
6 Avenue, New York, New York.

7 THE COURT: Good morning.

8 MS. LASK: Good morning, Your Honor.

9 MR. SCHER: Brett Scher, Your Honor, on behalf of
10 the Baum defendants, Kaufman, Dolowich, Voluck & Gonzo.

11 THE COURT: Good morning.

12 MR. SCHER: Good morning.

13 MR. BOESE: Andrew Boese from Morgan, Lewis &
14 Bockius, on behalf of the Mers defendants.

15 THE COURT: Good morning.

16 MR. BOESE: Good morning, Your Honor.

17 THE COURT: All right, folks. So you've had a
18 number of discovery disputes that have been pending for a
19 while. Have you made any progress in narrowing or resolving
20 your disputes?

21 MS. LASK: No, Your Honor, nothing.

22 THE COURT: All right. We're going to resolve
23 them today and we're going to get this case back on track in
24 terms of discovery. I want to make clear a few ground
25 rules, which I'm surprised that I have to make clear to you

1 folks, but let's be clear about certain things. In general,
2 requests for discovery are independent of other requests.

3 Ms. Lask, you actually point that out in one of
4 your letters, citing 26(d)(2), and yet you have insisted
5 that you cannot provide discovery until you get it. I don't
6 understand why it makes sense to take both of those
7 positions but requests are independent. You do not withhold
8 discovery on the ground that you have not gotten it.

9 Second, with respect to a protective order, in the
10 absence of an agreed upon protective order or a court order
11 of protection, a party must produce discoverable
12 information. If you haven't gotten an agreed upon
13 protective order and you think you need one, you ask me for
14 one. And if a party has asked for one, I want specific
15 objections to specific proposals.

16 A party must not delay providing responsive
17 documents on the ground that the same documents can be
18 requested again at a deposition, which I have seen, much to
19 my dismay.

20 If a party has no information responsive to a
21 request, say so explicitly in the response to the request,
22 and make that response specific to the specific request.
23 You don't have to waive any objection but I am not going to
24 spend time resolving disputes based on an objection where
25 the party says, but in any event, we simply don't have the

1 information. I expect every party to say so explicitly.

2 If one of the objections being preserved is
3 burdensomeness or harassment or vexatiousness, the response
4 must explain in detail -- you're nodding your head, Ms.
5 Lask, but this is directed to you. The response must
6 explain in detail why it is unduly burdensome to produce
7 nothing.

8 There is no formatting requirement in the Federal
9 Rules of Civil Procedure. My experience has been that most
10 word processing formats are recognized by most software.
11 But in any event, it is not a basis to withhold discovery or
12 withhold response based on a preference that your opponent
13 provide a request in a particular format.

14 Finally -- well, not finally. I expect you folks
15 to make a good faith effort through personal contact to
16 narrow or resolve your disputes before coming to court with
17 them. And when you feel you must come to court, I think it
18 serves everybody's interests if, instead of jumping
19 immediately to the most severe sanction that can possibly be
20 granted, you ask instead for relief that will allow the
21 parties to resolve the case on the merits.

22 Finally, in terms of general observations, in
23 light of the problems that I've seen -- I've rarely seen a
24 case where the breakdown is this profound. I think it would
25 make sense for you folks to deal attorney to attorney.

1 Please don't make requests of an adversary's support staff,
2 other than to speak to the attorney. If the attorney
3 doesn't respond promptly, feel free to send a letter, but I
4 don't want to have satellite disputes over who said what to
5 whose secretary.

6 All right, now, document demands: There is no
7 numerical limit on document demands, period. It is improper
8 to refuse to respond to document demands simply because they
9 exceed a certain number.

10 I want all documents to be produced in a way that
11 plainly identifies the documents responsive to each request
12 for discovery. And if you folks can't reach an agreement on
13 the costs of production, we're going to set a protocol for
14 each attorney to provide unrestricted access in that
15 attorney's office for the documents it is producing, for
16 purposes of inspection, and I mean unrestricted access for a
17 significant amount of time.

18 I strongly urge you folks to consider being
19 courteous and cooperative with each other, as the local
20 rules require, and to consider, instead of putting on
21 yourself the burden of making your office available in an
22 unrestricted way to your adversary, to simply taking the
23 time to copy documents and provide them, as most attorneys
24 do.

25 Interrogatories: There is of course the general

1 limitation of 25 including subparts, absent consent or a
2 court order. If you want more, explain the need. However,
3 this is a case in which there is an extensive complaint with
4 many factual allegations, and it seems to be fair that with
5 respect to allegations in the complaint and affirmative
6 allegations of fact in any responsive pleading, the
7 adversary is entitled to know what the party who pleaded the
8 allegation had in mind, what the factual support is. And if
9 that requires more than 25, I intend to grant more than 25.
10 I don't intend to allow parties to engage in self-help by
11 simply ignoring those responses -- those interrogatories.

12 Also improper in response to interrogatories are,
13 as examples, the complaint speaks for itself. If the
14 complaint spoke for itself, there would not be an
15 interrogatory. Or, and this pertains to interrogatories or
16 document demands, something along the lines of, you already
17 have the information or you could get it elsewhere. Those
18 are not proper responses.

19 With those general principles in mind, let's turn
20 to the specific disputes. Defendants' document requests.

21 Ms. Lask, you refused to respond to any requests
22 beyond the first 25; is that correct?

23 MS. LASK: Your Honor, following Rule 33, I
24 understood that he would have to make a motion, and I
25 understood that --

1 THE COURT: Excuse me. Let's examine that,
2 please.

3 MS. LASK: Okay.

4 THE COURT: Following Rule 33, interrogatories to
5 parties. What has that to do with documents?

6 MS. LASK: Oh, the documents, I'm sorry.

7 THE COURT: Yes. You refused to respond to any
8 document requests beyond the first 25; is that not correct?

9 MS. LASK: Let me find his thing. I don't recall
10 doing that but --

11 THE COURT: You don't recall?

12 MS. LASK: Not this second.

13 THE COURT: I recall. I saw it.

14 MS. LASK: Your Honor, I don't.

15 THE COURT: It was improper.

16 MS. LASK: Hold on.

17 THE COURT: Ms. Lask, if you're not familiar with
18 your own responses, that's fine, but we're not going to
19 pause on it now. It was improper, you did it.

20 Beyond the number of requests, is there any reason
21 why you shouldn't provide what you have, particularly since
22 you said in one of your letters that you don't have
23 anything?

24 MS. LASK: What I have is -- actually, I gave them
25 everything I have, Your Honor.

1 THE COURT: Then you will say so, but you will say
2 so item by item. You will certify --

3 MS. LASK: Yes, I will.

4 THE COURT: -- that you have nothing responsive to
5 that request.

6 MS. LASK: Okay.

7 THE COURT: And I want that to be based on a
8 reasonable inquiry, that you have in fact consulted your
9 clients and done a good faith search for responsive
10 documents. Of course, you will be bound by that response.

11 I find a lot of the boiler plate objections to be
12 entirely inappropriate, so I expect all responsive documents
13 to all of the requests to be provided.

14 Defendants' interrogatories: You engaged in self-
15 help by refusing to respond to interrogatories 26 through 56
16 and really provided substantive responses to very few. I
17 take it now that you understand that you cannot respond by
18 saying, the complaint speaks for itself or to say that the
19 defendants have access to the information from other
20 sources. You will in fact respond promptly to all of the
21 interrogatories, and by respond I mean actually provide the
22 responsive information. Ms. Lask?

23 MS. LASK: Yes, Your Honor. I'm writing it down.

24 THE COURT: Is there any reason I should not order
25 you to do that?

1 MS. LASK: I am certainly not going to argue with
2 that, Your Honor. I was not being malicious, I was going by
3 the rules. And I thought we were all doing -- we all
4 limited ourselves, myself, Mers, to 25. But yes, Your
5 Honor, I will comply with what you just ordered.

6 THE COURT: You know, that's fine as to the last
7 30 that you simply ignored. I don't think that's the proper
8 way to do it but that's at least a colorable argument. But
9 what about the complaint speaks for itself as a response to
10 the first 25 or objecting as harassive or vexatious, when
11 you were simply asked to say what it is you relied on in
12 making a factual allegation in your complaint? I just don't
13 understand that.

14 MS. LASK: Your Honor, when I do say -- I'm just
15 looking real quickly, like number 24. I say, the complaint
16 speaks for itself, but I do add the information anyway. I'm
17 not saying the complaint speaks for itself and I'm not
18 saying anything else. For instance, if we look at number
19 24, I do --

20 THE COURT: One moment.

21 MS. LASK: Okay, sure. It's page 8 of my
22 response. And number 23. Whenever I've said it, Your
23 Honor, I didn't just drop it right there. I also provide a
24 response. In my -- when I'm saying the complaint speaks for
25 itself, I made that complaint so detailed, I thought it gave

1 more information than anyone could ever -- I made it
2 factually detailed for the very reason to give them every
3 piece of factual information that I had. So even answering
4 these, I'm trying to say, look at the complaint as well but
5 here's a response. I don't know what more I can answer but
6 I could try, and I gave this to my --

7 THE COURT: All right, let's take up number 24.

8 MS. LASK: Okay, sure.

9 THE COURT: Mr. Scher, what more are you looking
10 for on that?

11 MR. SCHER: I'm sorry.

12 MS. LASK: Number 24, page 8.

13 THE COURT: Set forth with specificity the basis
14 for your allegation that plaintiff Miller has been damaged
15 by losing his right to sell his home because of defendants'
16 false foreclosure complaint, as alleged in paragraph 95 of
17 the complaint.

18 MR. SCHER: Your Honor, on that particular one,
19 what I was looking for is more information about this sale,
20 in terms of who it was to, were there contracts? This
21 obviously dovetailed with the document demand, which was
22 ignored, which would have hopefully given us the documents
23 and could have been referred to in the interrogatory
24 response, saying here's the purported sale contract, here's
25 the broker listing, here's something that I could have had

1 to say okay, this is his alleged RICO damages, I can look at
2 it and analyze it and see whether it actually is in fact
3 that he lost out on some particular sale that he claims in
4 the complaint that he did.

5 THE COURT: All right.

6 Ms. Lask?

7 MS. LASK: Your Honor, Mr. Scher seems to forget
8 that we gave him 107 pages and I did get the broker's
9 contract and I did provide it to him.

10 THE COURT: Well, you didn't provide any
11 directions to that in this response. And you know that
12 under Rule 33, which you cited to me before, if you want
13 your response -- if you want him to understand that this
14 response incorporates those documents by reference, you need
15 to say so.

16 MS. LASK: Your Honor, I will do that, and I
17 apologize if I honestly was ignorant not to do that, but the
18 documents are in his possession, he has them.

19 THE COURT: Look, comply with Rule 33.

20 MS. LASK: That's fine.

21 THE COURT: If you want to incorporate by
22 reference a specific document, and don't just say, you have
23 documents responsive to this. Say the specific document
24 that provides this information is, and however you want to
25 refer to it, by Bates number, by specific description.

1 So on the plaintiffs' side, you're going to
2 provide all of the documents, item by item response
3 identifying all existing documents within your possession,
4 custody or control. For each document demand, you're going
5 to provide a supplemental response as to every
6 interrogatory, including all responsive information,
7 specifically identifying responsive documents, if that's how
8 you wish to do so.

9 Now, on the plaintiffs' requests, I think this is
10 mainly with respect to the Baum defendants. Let's start
11 with the protective order, then we're back to the requests
12 themselves.

13 Is there anything besides the protective order,
14 Mr. Scher, that is preventing you from providing documents?

15 MR. SCHER: No, Your Honor. As a matter of fact,
16 we've made clear that the documents have been available for
17 inspection since I believe early -- I'm sorry, mid-December.

18 THE COURT: All right.

19 Ms. Lask, what is the objection to the proposed
20 protective order?

21 MS. LASK: His protective order?

22 THE COURT: Have you proposed one?

23 MS. LASK: No, we have not proposed one.

24 THE COURT: Okay. So then I would think that,
25 that being the only one in the record, that's the one we're

1 most likely discussing.

2 MS. LASK: His confidentiality agreement.

3 THE COURT: Just direct me, paragraph by
4 paragraph, to the parts that you wish me to change.

5 (Pause in Proceedings)

6 THE COURT: I take it that we're at this point --

7 MS. LASK: This is the four-page -- the five-page
8 -- it's five pages is what I have; is that correct?

9 THE COURT: I have an eight-page document. Ms.
10 Lask, I take it we are in this position because you have
11 actually thought through what your objections are to the
12 proposal. Is that not correct?

13 MS. LASK: The -- I didn't --

14 THE COURT: I don't propose to sit here while you
15 read it for the first time and say, wait a minute, maybe
16 this one is a problem.

17 MS. LASK: No. The confidentiality agreement
18 wasn't the problem. The problem was --

19 THE COURT: All right, then I will so order it.

20 MS. LASK: Yes.

21 THE COURT: What was the problem?

22 MS. LASK: The problem was, he was sending out the
23 documents to us, which I've never -- and the day he was
24 sending out all the documents -- I think he said he had
25 three hundred pages or something -- he said, you need to pay

1 for them. I said, Brett, how could you just do that? And
2 he pulled out the documents and he said, I'm stopping Fed
3 Ex, you're not getting anything. I don't think that's a way
4 to handle discovery. You send the documents. You don't
5 withhold them and say, I want a check from you, and you
6 don't just send somebody a bill without telling them ahead
7 of time. I've never --

8 THE COURT: Folks, I expect you all to act like
9 grown-ups and professionals.

10 MS. LASK: Yes.

11 THE COURT: I have not yet seen that.

12 MS. LASK: Yes.

13 THE COURT: If you don't want to just produce
14 things at your own expense or reach an agreement about how
15 you're going to share costs, fine, be that way. But if you
16 can't reach an agreement about visiting each other's
17 offices, I'll give you a room here. You will spend your
18 days in the jury room and you will not leave there until you
19 are done with your review. I don't expect to see that
20 problem further.

21 Do you understand?

22 MR. SCHER: Yes, Your Honor.

23 THE COURT: Do you?

24 MS. LASK: Yes, Your Honor.

25 THE COURT: That's good.

1 MS. LASK: We've produced every --

2 THE COURT: Stop, please.

3 So the protective order will be so ordered, as
4 proposed, as of today. The documents will be produced.

5 Are there any other objections that we should
6 spend our time on, Mr. Scher, with respect to the
7 plaintiffs' document requests or interrogatories?

8 MR. SCHER: The only -- I don't know if this is
9 what you were planning on getting at.

10 THE COURT: No, I'm not getting at anything other
11 than this: If there is a reason for me to do anything other
12 than to have each party provide all responsive information
13 to all of its adversary's document requests and
14 interrogatories, I want to hear it now, item by item.

15 MR. SCHER: The only other issue is the joinder
16 discovery.

17 THE COURT: Yeah, well, we'll get to that in a
18 moment.

19 MR. SCHER: Okay. Then that's the only issue that
20 I had, Your Honor.

21 THE COURT: Okay, so that's the ones identifying
22 attorneys who work for your firm or your client's firm?

23 MR. SCHER: Yeah. Your Honor, the joinder
24 discovery deadline has passed.

25 THE COURT: You know something? You folks have so

1 blown the deadlines through your lack of cooperation that if
2 something needs to -- if a deadline needs to be adjusted to
3 accommodate the fact that you folks have not provided
4 discovery to one another and have not cooperated as you're
5 supposed to, I'm going to reset the deadlines, so let's not
6 worry about that.

7 Now, I read Judge Weinstein's order fairly clearly
8 that he sees there being fairly discrete legal issues
9 relating to the nature of the complaint that he wants to
10 resolve on an expedited basis. I don't think we need to
11 have discovery aimed solely at identifying other people
12 against whom you can bring the same claims to get to the
13 point where Judge Weinstein can resolve the issues he wants
14 resolved on the merits.

15 Does that seem like a fair characterization?

16 MS. LASK: Yes, Your Honor.

17 THE COURT: Okay. So then let's not delay this
18 needlessly by pursuing discovery that isn't going to the
19 merits but goes to identifying other people against whom you
20 might wish to make the same claims.

21 MS. LASK: Can I say one thing for clarification,
22 please?

23 THE COURT: Yes, of course.

24 MS. LASK: The only thing that we've been finding
25 out -- because of the discovery issues, the best I could do

1 was go to other attorneys in other cases on the internet and
2 get depositions and everything. I got as much -- tens of
3 thousands of pages. That's fine. I'm going through it.

4 And what I discovered on my own, after the
5 deadlines -- and I'm not making an issue with it right now.
6 What they did is, they waited until after the deadline and
7 then I get a signing agreement between Mr. Baum and Mers,
8 which really helps the plaintiff's case. That signing
9 agreement I got January 12th, which was way after the
10 deadline for joinder. I asked for it before. They held it
11 back and then they said, too bad, you lost your right.

12 That signing agreement tells me that I can bring
13 in just one party, Pillar (ph) Processing. When I looked
14 through the documents, now I realize that Pillar Processing
15 was actually part of this with Steven Baum.

16 THE COURT: If the case survives the dispositive
17 motion that Judge Weinstein is waiting to decide, we can
18 certainly take up then requests to amend, to add new parties
19 to the same claims, whatever claims survive that motion
20 process.

21 But, again, I'm going to ask you this time to be
22 responsive to the question that I ask. Is there some reason
23 not to defer discovery that is only geared towards
24 identifying new people to sue on the same charges?

25 MS. LASK: At this point, I think I know that it's

1 only Pillar that we'd like to add at some point, so yes.

2 THE COURT: So you don't need discovery towards
3 joinder.

4 MS. LASK: No, Your Honor, I think I have pretty
5 much --

6 THE COURT: Okay, so then --

7 MS. LASK: I received the -- January 12th is when I
8 received it. I got the signing agreement.

9 THE COURT: So then --

10 MS. LASK: I would like -- I would like the
11 opportunity --

12 THE COURT: All right. You'd like the opportunity
13 to?

14 MS. LASK: I wanted to amend the complaint and put
15 the right parties in there. I wanted to -- and I discussed
16 it with them. I'd actually like to take out a couple of
17 causes of action, you know, to clean it up, and we could
18 focus on the two main actions, which are the RICO and the
19 Fair Debt Collection Practices action.

20 I wanted to add, Your Honor, in considering Sykes
21 (ph) that just came out, the judicial 487 cause of action as
22 well, with respect to the Baum defendants. What I was
23 researching and what I wanted to do was a cross-motion to
24 amend the complaint, and I'd like to make that -- put that
25 on the floor right now to Your Honor.

1 THE COURT: Well, if you want to make a motion,
2 make a motion. But right now, we have an expedited
3 discovery schedule to get you folks to the point where you
4 can take up, as Judge Weinstein hoped to do -- I'm looking
5 now for my copy of his order. Just give me a moment,
6 please.

7 MS. LASK: Your Honor --

8 THE COURT: Please let me just find what I'm
9 looking for.

10 MS. LASK: Okay, sure.

11 THE COURT: If I have it here, which I may not.

12 MR. SCHER: Your Honor, I have a copy, if it
13 helps.

14 THE COURT: Yes, please.

15 All right, so it's the motion to dismiss and Judge
16 Weinstein converted it to a motion for summary judgment,
17 minimized the burden of litigation on all parties. He did
18 so bearing in mind that the Law of Mortgages and their
19 enforcement is essentially state in nature, while the
20 gravamen of this action is a hard to prove federal RICO
21 accusation of widespread fraud with a serious criminal
22 color.

23 The point is to get to resolution of the converted
24 motion for dismissal as soon as possible. To the extent
25 that there are other claims possibly to be brought, I think

1 we should defer that until we are past the point where Judge
2 Weinstein has addressed the issue before him.

3 Mr. Scher, the joinder-related interrogatories
4 that you object to, just run through which ones they are, so
5 we're all on the same page about what we're going to defer,
6 and we can discuss whether there should be any changes to
7 what you propose. I have on my list 3, relating to
8 attorneys who work for Baum; 5, information about directors,
9 shareholders and employees; 6, corporate filings of Pillar;
10 7, directors, shareholders and employees of Pillar; and then
11 9, sort of a catch-all, in which the plaintiff asks the
12 defendant to identify other potential defendants.

13 MR. SCHER: I believe plaintiff was not asking for
14 supplemental responses on 9 anymore, if I'm not mistaken.

15 THE COURT: Is that correct?

16 MS. LASK: We discussed it on January 3rd. I was
17 asking for him to respond to all supplemental responses.

18 THE COURT: Is it correct or not?

19 MS. LASK: No, it's not correct.

20 THE COURT: Okay, so you still want -- you still
21 want to have your adversary identify for you people whom you
22 should sue.

23 MS. LASK: I'll withdraw it, Your Honor. We'll
24 make that easy. But the Pillar Processing is very
25 important. They completely -- if you look at their answers

1 on that one, they completely blow us off, give us nothing.

2 THE COURT: Do you have documents -- filings about
3 Pillar Processing?

4 MR. SCHER: Your Honor, Pillar Processing is not
5 my client.

6 THE COURT: Do you have the documents?

7 MR. SCHER: I do not.

8 THE COURT: Then say so, right? This is one of
9 the things that I was trying to convey at the outset. Let's
10 not get into litigation to avoid having you say, we don't
11 have something.

12 All right, so 9 is withdrawn, 6 you'll answer by
13 saying you don't have it.

14 MR. SCHER: Your Honor, just for the record, in my
15 supplemental response to Ms. Lask, I specifically stated
16 that the documents sought are not in our custody or control.
17 I did -- we did give her a supplemental response, as she
18 requested.

19 MS. LASK: Pillar Processing is a company of
20 Steven Baum. He leases the employees. They do have
21 documents regarding it but --

22 THE COURT: Okay, look, I am going to -- however
23 unlikely it may seem when either one of you says, as to a
24 particular request, we don't have anything, I rely on
25 attorneys to be candid. If we get to the point where I have

1 reason to believe that the attorneys here have been less
2 than candid in denying access to documents that they -- to
3 which they actually do have access, we're going to have a
4 very different kind of hearing, where all of the attorneys
5 are on the stand.

6 Mr. Scher, you will in any event be providing a
7 supplemental response. It won't kill you to say once again,
8 we don't have anything responsive to number 6, if that is
9 true. If you do have it, you'll provide it.

10 MR. SCHER: Understood.

11 THE COURT: 3, 5 and 7, about Baum and Pillar
12 employees, directors, attorneys, shareholders, et cetera.
13 Any reason we can't defer that until after we have the
14 ruling from Judge Weinstein?

15 MS. LASK: I'm going to answer the summary
16 judgment. I'd like to know the relationship between Pillar
17 and Baum. I found on every document that's been filed
18 Pillar is in the same office as Baum. Also, on every
19 document that Mr. Baum files, Pillar Processing is -- has a
20 stamp on there as well. And I think --

21 THE COURT: I'll give you 7, which is about
22 Pillar.

23 MS. LASK: Okay, Your Honor.

24 THE COURT: 3 and 5, attorneys, shareholders,
25 directors, employees of Baum, denied.

1 So in all other respects, the defendants will
2 provide all information responsive to all outstanding
3 interrogatories and documents -- document requests. The
4 protective order is so ordered, with the exception that to
5 the extent you refer to the individual rules of I think it's
6 Judge Sullivan --

7 MR. SCHER: Judge Gardafi (ph), Your Honor.

8 THE COURT: I'm sorry?

9 MR. SCHER: It's Judge Gardafi.

10 THE COURT: Gardafi. Obviously, that's inapposite
11 here; it would be Judge Weinstein.

12 All right, depositions. Well, before we get on to
13 depositions, now that you all understand, or hopefully more
14 clearly your obligations in this case and understand that
15 you must comply with them, how quickly will we have all of
16 the document and interrogatory responses?

17 MR. SCHER: Just to be clear, Your Honor, you've
18 been saying all the defendants to all this. Right now --

19 THE COURT: No outstanding --

20 MR. SCHER: -- there are no motions to compel
21 between the Mers defendants and --

22 THE COURT: Okay, all right.

23 MR. SCHER: Okay.

24 THE COURT: Any reason why this can't be done in
25 two weeks?

1 MS. LASK: Today is February 15th.

2 THE COURT: Today is February 10th.

3 MS. LASK: February 10th.

4 THE COURT: That would be February 24th.

5 MS. LASK: Your Honor, could we have three weeks
6 at least?

7 THE COURT: For you to say -- for you to say, item
8 by item, you don't have anything?

9 MS. LASK: I'm going to go through it again with
10 my -- I send it to my clients. I have an eighty-year-old
11 woman --

12 THE COURT: Well, they've had it for quite some
13 time.

14 MS. LASK: I also -- Jeffrey Miller just sent me
15 an e-mail the other day asking about depositions. I said,
16 we have a hearing, and he went on a trip, I think he said
17 somewhere in Central America.

18 THE COURT: Who is Jeffrey Miller?

19 MS. LASK: The plaintiff. There are two
20 plaintiffs. Ms. Campbell is eighty, Jeffrey Miller is --

21 THE COURT: February 24th.

22 So with the understanding that you will both have
23 in hand on February 24th all of your adversary's productions,
24 how many depositions do you have in mind and how quickly can
25 we get them done?

1 MS. LASK: There's Steven Baum, there's Epinicke
2 Vukakis (ph) and they're doing Jeffrey Miller and the
3 eighty-year-old plaintiff, Concepcion Campbell.

4 THE COURT: Anyone else?

5 MS. LASK: Actually, I think we had three. Who
6 did we have? I noticed Steven Baum, Epinicke Vukakis.

7 MR. SCHER: That's it.

8 MS. LASK: Are you sure?

9 MR. SCHER: Two plaintiffs, two defendants.

10 THE COURT: Two plaintiffs, two defendants?
11 Anyone from Mers?

12 MS. LASK: No. There are depositions out there
13 and we're not going to --

14 THE COURT: Anyone else that anyone thinks we need
15 to -- so four depositions. Any reason we can't get that
16 done three weeks after you have the documents in hand?

17 MR. SCHER: No.

18 THE COURT: Ms. Lask?

19 MS. LASK: I think it should be okay.

20 THE COURT: Then here's how we're going to leave
21 it. We have a deadline for documents and interrogatory
22 responses. I'll set the deadline three weeks beyond that
23 for depositions. I've contacted Judge Weinstein's chambers
24 just to make sure that they're okay with having to schedule
25 that -- it necessarily requires the hearing on summary

1 judgment to slip back somewhat, to accommodate this. I
2 don't have a date for you on that. You can contact Judge
3 Weinstein's chambers to get a new date for the summary
4 judgment hearing.

5 Now, look, we are -- I'm trying to streamline this
6 to the extent possible, so that you can get to the
7 resolution of the issue Judge Weinstein had in mind. I'm
8 not foreclosing the possibility that there will be other
9 issues that either side might want to litigate, once you
10 have a resolution of those issues. That's largely, of
11 course, your desire, Ms. Lask, to amend.

12 That's not to say that it may not be in your
13 interest to reach an agreement to have an amendment now, so
14 that you only have one round of dispositive litigation
15 before Judge Weinstein. I'm not going to force that on you,
16 certainly not in the first instance, but I do think it's
17 something you might want to consider, and I will be more
18 than open to a slight adjustment of our schedule to
19 accommodate that, if it's something you agree on. But
20 absent agreement, I think we're best advised to try and get
21 the issues before Judge Weinstein ready for him to resolve.

22 MS. LASK: Your Honor?

23 THE COURT: Yes.

24 MS. LASK: I don't want to upset the Court but,
25 again --

1 THE COURT: You won't.

2 MS. LASK: Okay. If I don't do the right thing
3 and preserve my rights to amend under the rules as I
4 understand them, I think I should do a cross-motion or --
5 there's no way they're going to agree, I don't think. The
6 only person I want -- the only entity I want to add is
7 Pillar, which is critical to this whole scenario.

8 THE COURT: I guess what I don't understand is --
9 and walk me through the reasoning here. What you're saying
10 is, you have the same RICO claim and some other related
11 claims that you can bring against a party who is not here,
12 but that is not substantively different from the claims
13 against the pending parties, correct?

14 MS. LASK: Yes. Mers -- if I don't add Pillar now
15 and get some quick information about Pillar and why it was
16 created -- I know why but I want to get the information to
17 prove my summary judgment to Judge Weinstein.

18 THE COURT: Is there something that impedes you
19 from doing that without having them as a party?

20 MS. LASK: Is there something that prevents me
21 from not adding -- from doing it later?

22 THE COURT: You say you need information. I guess
23 -- look, if it's a claim, winning or losing the issue before
24 Judge Weinstein won't affect your ability to pursue a non-
25 party on any claim that is viable.

1 MS. LASK: You mean to freely amend later, if
2 this --

3 THE COURT: Or bring a separate lawsuit, however
4 you prefer to do it. But you don't need to do that to have
5 a fair resolution of the claims before Judge Weinstein. If
6 it's a matter of getting information to litigate fairly the
7 claims before Judge Weinstein, I may be missing something
8 but I don't see why it matters if they're a party.

9 MS. LASK: It's a matter of showing the enterprise
10 -- it clarifies --

11 THE COURT: Forgive me for interrupting but the
12 enterprise is a matter of proof, and it is a separate
13 concept under RICO from the defendant. In fact, the
14 enterprise has to be distinct from the defendant. So
15 whether or not Pillar or anyone else is a party does not
16 affect your ability to prove that Pillar is a part of the
17 enterprise.

18 MS. LASK: Without alleging it in the complaint at
19 this point? So what you're saying is, in my summary
20 judgment, I'm going to explain that with facts from
21 somewhere.

22 THE COURT: Look, you're going to explain however
23 you see fit, how you satisfy the enterprise requirement of a
24 RICO claim.

25 MS. LASK: If it's not alleged in the complaint

1 now, what I'm concerned with is -- now that I know, it makes
2 the enterprise that much stronger and that much more
3 understandable to Judge Weinstein, to the Court.

4 THE COURT: That the enterprise -- that one of the
5 members of the enterprise is Pillar.

6 MS. LASK: Yes.

7 THE COURT: Okay. Is there reason not to allow an
8 amendment that says just that?

9 MR. SCHER: To --

10 THE COURT: Say that -- to have the plaintiff say,
11 we think there's an enterprise out there that's violating
12 RICO or members which are violating RICO, and you guys are
13 violating RICO by carrying out -- by conducting the affairs
14 of this enterprise through a pattern of racketeering
15 activity. So the amendment, as I understand the proposal by
16 Ms. Lask, is to amend the description of the enterprise to
17 include Pillar.

18 MR. SCHER: Your Honor, obviously, I don't know
19 why this allegation hasn't been made earlier, if she's
20 alleging --

21 THE COURT: As we tried to clear up earlier, we're
22 not going to worry about the timing aspect of it, so that we
23 can get to a fair resolution of the merits. Am I correct?

24 MR. SCHER: Right.

25 THE COURT: Okay. So that being off to the side

1 and not part of anything that would be responsive to the
2 question I asked you, let's try again.

3 MR. SCHER: To the extent not adding Pillar as a
4 party but simply adding an allegation to the RICO enterprise
5 element that plaintiffs are alleging upon information and
6 belief that Pillar is also -- I wouldn't have any objection
7 to adding that allegation.

8 THE COURT: Is that all what you want to do?

9 MS. LASK: No. What I want to do is add them as a
10 party. That's what I wanted to do. I wanted to add them as
11 a party so I could explain it clearly to the Court.

12 THE COURT: But that's the thing; you're saying --
13 you're somehow connecting the addition of a party to your
14 ability to explain something. You can explain something
15 quite well, I'm sure, regardless of who's across the table
16 from you. There seems to be no objection to changing the
17 description of the enterprise to include Pillar, and that
18 seems to be key to a fair resolution of the issue before
19 Judge Weinstein.

20 He wants to take a look at the viability of the
21 RICO claim. And I can understand, in litigating that, you
22 want to have -- to take your best shot at saying, here's why
23 we can succeed on a RICO claim, because there is this
24 enterprise and the enterprise includes Pillar. There's no
25 objection to that.

1 But in terms of adding Pillar as a party, the
2 claim may or may not be viable at all against Baum, against
3 Pillar, against anyone. If it is viable, according to Judge
4 Weinstein, what I'm saying is we can address later adding
5 Pillar as a party. But adding them now won't affect your
6 ability to litigate the issue before Judge Weinstein but
7 will slow down the process of getting to that. That's sort
8 of how I see it and I wanted to see if you have any
9 disagreement with that.

10 MS. LASK: If the Court is talking about
11 explaining it in the summary judgment, yes, I could do that.

12 THE COURT: Okay.

13 MS. LASK: But I just -- if we went to depositions
14 and something came out and I needed to amend it based on the
15 depositions, would the Court hear that?

16 THE COURT: I will hear any motion at any time.
17 I'm not saying I will grant the relief.

18 MS. LASK: Okay.

19 THE COURT: But we don't know what's going to
20 happen tomorrow, and we're not going to plan around what e
21 don't know, all right. Okay.

22 Anything else for today?

23 MS. LASK: If we -- if anything happened, Your
24 Honor, that we needed maybe a couple more days and we
25 agreed, would the Court acknowledge that, just in case the

1 24th is a little too short?

2 THE COURT: We'll cross that bridge when we come
3 to it.

4 MS. LASK: Okay.

5 THE COURT: And no order of mine is ever going to
6 prevent you folks from cooperating with each other and
7 exchanging information on a voluntary basis.

8 MS. LASK: Thank you.

9 THE COURT: What I very much doubt I am going to
10 do is adjust the deadlines in a way that will further delay
11 the resolution of the summary judgment motion.

12 MR. BOESE: I have just two quick questions, Your
13 Honor.

14 THE COURT: Yes, sir.

15 MR. BOESE: Are the dates in which Ms. Lask
16 responds to the dispositive motions, are those going to
17 shift in addition to the hearing date for the summary
18 judgment and our replies?

19 THE COURT: I don't have the -- I don't think I
20 do. Hold on a second -- the schedule before me.

21 MR. BOESE: Currently, the response would be due
22 on the 15th and then our reply on the 24th.

23 THE COURT: I think we have to change -- change
24 those dates to accommodate that.

25 MS. LASK: Can we -- you said three weeks after,

1 then we're going to hold depositions. So --

2 THE COURT: Right, so we need to go beyond --

3 MS. LASK: That brings us -- right -- March 8th.

4 THE COURT: Why don't I do this? I don't have
5 specific dates in mind and I don't want to do the math right
6 now. We had a schedule geared towards the March 4th date
7 that had these interim dates for the submissions. We are
8 delaying the close of discovery through whatever the date
9 is, three weeks after February 24th. I'm just going to add
10 to your submission dates whatever that delay is.

11 I want to run that by Judge Weinstein's chambers
12 to make sure that he's okay with that, but I assume it will
13 be. And if the particular dates for those submissions are
14 things that you want to agree to change, just write me a
15 letter, okay?

16 MS. LASK: Thank you, Your Honor.

17 MR. BOESE: Judge, my only other understanding is
18 that discovery is closed as between Mers and the plaintiffs,
19 other than --

20 THE COURT: Is there anything outstanding between
21 you folks?

22 MR. BOESE: -- without further motion. I mean,
23 there are no motions pending.

24 THE COURT: Is there anything outstanding that
25 either of you is looking for?

1 MS. LASK: No. I think most -- no, we've been
2 talking.

3 THE COURT: Okay.

4 MS. LASK: We're fine. But I don't think there's
5 an order -- there could be an order that says discovery is
6 closed but I think we're fine. I'm not --

7 THE COURT: I'm not going to look for problems
8 here. If somebody learns something in the remaining
9 discovery -- this is something that's always --

10 MR. BOESE: I understand --

11 THE COURT: -- always inherent in the process.

12 MR. BOESE: I understand that, Your Honor.
13 There's going to be depositions.

14 THE COURT: Right, and you learn something and
15 say, wait, I need to follow up on that. I'm not going to
16 foreclose it. It sounds like you folks -- between plaintiff
17 and Mers, it sounds like there's no pending disputes.

18 All right, thank you all.

19 MS. LASK: Thank you very much, Your Honor.

20 MR. SCHER: Thank you.

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18 I certify that the foregoing is a correct transcript
19 from the electronic sound recording of the proceedings in
20 the above-entitled matter.
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25 ELIZABETH BARRON

February 17, 2011